



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 930/2019*.**

<i>Communication submitted by:</i>	T.C. (represented by counsel, Dania Coz Barón, of Comisión de Derechos Humanos)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Peru
<i>Date of complaint:</i>	31 August 2016 (initial submission)
<i>Date of adoption of decision:</i>	4 November 2022
<i>Subject matter:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; lack of effective investigation and redress
<i>Procedural issues:</i>	Exhaustion of domestic remedies; competence <i>ratione materiae</i>
<i>Substantive issues:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; right to a prompt and impartial investigation; right to complain; right to redress
<i>Articles of the Convention:</i>	2 (1), 12, 13 and 14

1.1 The complainant is T.C., a national of Peru born on 21 August 1990. He claims that the State party has violated his rights under articles 2 (1), 12, 13 and 14 of the Convention. The complainant is represented by counsel.

1.2 The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 7 July 1988.

Facts as submitted by the complainant

2.1 On 8 September 2007, a bull was stolen in the municipality of Uchumarca, which is located in the district of Yanahuanca, Province of Daniel Alcides Carrión, Department of Pasco. On 9 September 2007, at approximately 8.30 p.m., two municipal officials, the Vice-President of the Governing Council and two community members went to the home of the complainant, who was a minor at the time, and told his father that they had to take his son to the criminal investigation division of the Peruvian National Police in Cerro de Pasco because he had been reported for cattle rustling. The complainant was taken, in the company of his

* Adopted by the Committee at its seventy-fifth session (31 October–25 November 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



father, to the Uchumarca municipal offices, where they signed an “intervention report” indicating that he would be taken peaceably to the criminal investigation division. At around 10.30 p.m., the municipal officials sought the help of the owner of a station wagon to take the complainant to the city of Cerro de Pasco, the capital of the region of Pasco. The complainant’s father was forced to remain in Uchumarca.

2.2 After travelling around two kilometres, the public officials mentioned above took the complainant out of the vehicle and threatened him, demanding that he confess to the cattle theft. They subsequently returned to Uchumarca and, on the way, got out of the vehicle again near a stream, where they forced the complainant to strip and walk barefoot, while they pushed and kicked him, approximately 700 metres along a rocky path until they reached a bridge on the Chacaragra River. There they told him that they would kill him if he did not confess. The Vice-President of the Governing Council tied his hands with a cord and tied a rope around his waist so that one of the community members could drop him into the freezing water of the river for a few minutes and then lift him out. This went on for approximately half an hour. The complainant finally admitted that he had taken part in the cattle theft, along with the brothers whose last name was B.C. Nonetheless, they continued submerging him in the river until he lost consciousness.¹

2.3 On 10 September at 3 a.m., the complainant regained consciousness in the bed of an employee of the municipality of Uchumarca. From there, he was taken at 10.30 a.m., without having been given any food, to the municipal offices, where the B.C. brothers were also present. The complainant’s father was informed that his son had returned and that he had confessed. While the complainant and the B.C. brothers were in the municipal offices, they were beaten by the B.C. brothers’ brother-in-law and the son of the owner of the bull that had allegedly been stolen, who kneed and kicked them in various parts of their bodies, forcing them to confess to the offence. While this was happening, a community member entered the municipal offices and asked the reason for the abuse. At this point, the aggressors stopped their blows and called the complainant’s and the B.C. brothers’ families to reach an agreement and replace the bull.²

2.4 On 12 September 2007, the complainant told his father that he had been tortured. On 14 September 2007, the “record of forensic medical examination for the detection of injuries or death resulting from torture”³ was issued, showing that the examining experts had found the “presence of injuries”⁴ and “post-traumatic stress disorder”.⁵ On 27 September 2007, the complainant’s father filed a criminal complaint for the offences of torture, kidnapping and gross injury to the complainant with the Daniel Alcides Carrión Provincial Prosecutor’s Office of Mixed Jurisdiction.

2.5 On 27 September 2007, the complainant’s father requested that the court be declared to be without jurisdiction, arguing that the offence being investigated fell instead within the jurisdiction of the Supra-Provincial Prosecutor’s Office of Lima. However, the request was denied⁶ on the grounds that, in judicial districts where no public prosecutor’s office has been designated to handle cases of crimes against humanity, the prosecutor on duty that day will take charge of the preliminary investigation and pretrial measures and only in cases of extraordinary complexity may jurisdiction be transferred to the supra-provincial criminal prosecutor on duty.

¹ Judgment No. 34-2008 contains a reference to the investigating judge’s inspection report, in which the complainant specifies the places where he says that he was tortured.

² On the basis of the settlement agreement, the teenagers were punished with three lashes each and then went to their homes.

³ Forensic medical certificate No. 001852-L, dated 14 September 2007.

⁴ Green ecchymosis, infra-orbital and right malar tumefaction, violet ecchymosis on the anteroexternal aspect of the right arm, tumefaction on the scalp in the frontal and occipital regions, diminishing tumefaction in the lower third of sternum and epigastrium, and violet ecchymosis and tumefaction in the bilateral scapular region.

⁵ The psychological evaluation was carried out by an employee of Daniel Alcides Carrión Hospital because the Public Prosecution Service had no staff members with that specialty.

⁶ Decision No. 380-2007, of 7 November 2007, of the Daniel Alcides Carrión Provincial Prosecutor’s Office of Mixed Jurisdiction.

Criminal proceedings under the summary procedure

2.6 On 9 November 2007, the Daniel Alcides Carrión Provincial Prosecutor's Office of Mixed Jurisdiction presented an official criminal complaint⁷ and, in its decision No. 1 of 23 November 2007, the Daniel Alcides Carrión Court of Mixed Jurisdiction instituted pretrial proceedings for the offence of torture.⁸ On 2 June 2008, the Daniel Alcides Carrión Provincial Prosecutor's Office of Mixed Jurisdiction filed charging document No. 146-2008, requesting that the defendants be sentenced to 7 years' imprisonment for the offence of torture and the joint and several payment of 6,000 soles (approximately US\$ 1,800) in civil damages. On 10 July 2008, the Daniel Alcides Carrión Court of Mixed Jurisdiction found the defendants guilty of a crime against humanity in the form of torture and sentenced them to 4 years' imprisonment and the payment of 6,000 soles in civil damages.⁹

2.7 On 14 July 2008, the incumbent Provincial Prosecutor of the Daniel Alcides Carrión Provincial Prosecutor's Office of Mixed Jurisdiction filed an appeal challenging the length of the sentence imposed and requesting that the judgment be annulled.¹⁰ On 30 October 2008, the Division of Mixed Jurisdiction of the Central Court of Cerro de Pasco declared the judgment null and void and ordered the judge who had issued it to issue a new judgment setting out adequate grounds for the length of the sentence imposed. On 8 September 2009, the Division of Mixed Jurisdiction of the Court of Pasco announced on its own motion that, since the criminal case involved a crime against humanity, it should be heard under the ordinary procedure. On 27 June 2011, the judge of the Division of Mixed Jurisdiction of the Court of Pasco stated in its decision No. 33 that there had been "serious irregularities that are grounds for annulment", since the case had been tried before a court that did not have jurisdiction to hear cases involving crimes against humanity.

Criminal proceedings under the ordinary procedure

2.8 On 20 September 2011, the case was assigned to the Third Supra-Provincial Criminal Court of Lima. On 6 November 2012, the First National Criminal Prosecutor's Office filed charges against the defendants for the offence of torture, requesting 8 years' imprisonment and the payment by each of the defendants of 5,000.00 soles (approximately US\$ 1,500) in civil damages.¹¹ On 30 September 2013, the National Criminal Division acquitted the defendants on the grounds that the evidence presented at trial was neither sufficient nor suitable. The Division found that there was insufficient evidence of severe suffering, as it considered that the fact that the complainant had not initially confessed was a sign that the threats had not succeeded in intimidating him; that the statements of the complainant's father and the owner of the vehicle were not direct evidence; that the investigating judge's inspection had limited evidentiary value because one of the parties had not been present when it was carried out; that the forensic medical examination report revealed no injuries that would corroborate the complainant's account, in particular marks on his waist from the pressure of the rope; and that the circumstances under which the psychological evaluation had been conducted detracted from its evidentiary value, in particular because the evaluation had been conducted by a psychologist without the necessary expertise to identify injuries or sequelae from acts of torture on the basis of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

⁷ Criminal complaint No. 84-2007.

⁸ Criminal case No. 89-2007.

⁹ Judgment No. 34-2008.

¹⁰ The sentence imposed was one year less than the minimum sentence under the criminal laws (Criminal Code, art. 321). Any public official or civil servant or any person who, with the consent or acquiescence of the former, inflicts on another person severe pain or suffering, whether physical or mental, or subjects him or her to conditions or methods that deny his or her personhood or diminish his or her physical or mental capacities, even if they do not cause physical pain or psychological distress, for the purpose of obtaining from the victim or from a third person a confession or information, punishing him or her for any act that he or she has committed or is suspected of having committed, or intimidating or coercing him or her, shall be liable to a term of imprisonment of not less than five and not more than ten years.

¹¹ Document No. 71-2012.

2.9 On 9 October 2013, the responsible senior prosecutor filed a motion to have the judgment annulled. However, the Supreme Prosecutor stated that there was a lack of evidence demonstrating the defendants' guilt. Consequently, on 16 June 2015, the Transitional Criminal Division of the Supreme Court of Justice denied the request for annulment on the basis of the principle of hierarchy and closed the case.¹²

Complaint

3.1 The complainant claims that the State party has violated his rights under articles 2 (1), 12, 13 and 14 of the Convention.

3.2 The complainant contends that the State party has breached its obligations under article 2 of the Convention by failing to adopt prompt measures to prevent the acts of torture committed against him.

3.3 In addition, the complainant considers that the State party violated articles 12 and 13 of the Convention in that, after his father had reported the torture, the acts were investigated by a body that was not competent to do so, namely the Daniel Alcides Carrión Court of Mixed Jurisdiction. This situation was not remedied until 20 September 2011, when the Third Supra-Provincial Criminal Court of Lima took up the case, even though the complainant's father had filed a motion – which was found to be without merit – to have the Court of Mixed Jurisdiction declared to be without jurisdiction. The acts of torture were not investigated by a competent authority until four years after they had occurred; this caused an undue delay and subsequent deficiencies in the investigation and thereby led to an acquittal. Despite the evidence that existed, the National Criminal Division, in the acquittal it handed down on 30 September 2013, found that there was insufficient evidence.

3.4 The complainant also claims that the State party has violated article 13 of the Convention, as he did not have access to an effective channel for his complaints.

3.5 Lastly, the complainant alleges that the State party has violated article 14 of the Convention, since he has to date obtained no redress. In this regard, the complainant refers to paragraph 3 of the Committee's general comment No. 3 (2012), which states that "a person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted".

State party's observations on admissibility and the merits

4.1 In its observations on admissibility of 21 July 2019, the State party asks that the communication be found inadmissible for failure to exhaust domestic remedies and as constituting an abuse of the right of submission. If found admissible, the State party asks that it be rejected on the merits.

4.2 The State party argues that domestic remedies have not been exhausted in accordance with article 22 (5) of the Convention, as no legal proceedings have been initiated in respect of the alleged rights violations on the basis of the Supreme Court decision of 16 June 2015. In this regard, the State party considers that the complainant had the opportunity to file a petition for *amparo*¹³ under the Code of Constitutional Procedure (Act No. 28237), article 1 of which states that: "The procedures addressed in this title are intended to protect constitutional rights and restore the situation to what it was before the violation or threat of violation of a constitutional right."¹⁴

4.3 The State party also asserts that the communication constitutes an abuse of the right of submission and should be declared inadmissible under article 22 (2) of the Convention. The State party states that the individuals alleged to have committed acts of torture were acquitted and that the criminal proceedings against them were conducted in accordance with

¹² Decision of 16 June 2015 of the Transitional Criminal Division of the Supreme Court of Justice.

¹³ Code of Constitutional Procedure, art. 4.

¹⁴ Constitutional Court, judgment of 14 March 2006, case No. 1209-2006-PA/TC, application for *amparo* filed by the company Compañía Cervecería Ambev Perú, S.A.C.

the pre-established rules of domestic law, including due process guarantees.¹⁵ The State party notes that, although the prosecutor filed a motion for annulment, citing, *inter alia*, an improper assessment of the body of evidence, the Supreme Court of Justice found that there was no evidence to establish the guilt of the accused. The State party also notes that the fact that the case did not result in a conviction does not automatically mean that the complainant's right to due process was violated. Lastly, the State party asserts that, in adopting their decisions, the courts acted within the scope of their competence to interpret the law, and the Committee is not empowered to act as an international court for appeals against or the review of such decisions, nor can it examine alleged errors of fact that may have been committed by national courts acting within the limits of their competence.

4.4 On 26 November 2019, the State party submitted its observations on the merits of the communication to the Committee. With respect to the alleged violation of article 2 (1) of the Convention, the State party argues that States parties are obligated to make torture an offence under their domestic criminal laws and to adopt a definition of torture. The State party recalls that it incorporated article 321 into its Criminal Code in 1998 and that, on 7 January 2017, the article was amended by Legislative Decree No. 1351, which sets out a definition of torture that includes almost the entirety of article 1 of the Convention and provides for harsher penalties and aggravated forms. The new definition does not set out any specific reason for or purpose of the torture, thus broadening the range of circumstances in which torture can be considered to have occurred. Lastly, the State party points out that its obligations to prevent, end, prosecute and punish any act of torture committed in its territory are provided for, directly or indirectly, in the Constitution and the Criminal Code and that there can therefore be no basis for a finding of a violation of article 2 (1) of the Convention.

4.5 With regard to the complainant's allegations under articles 12 and 13 of the Convention, the State party argues that the domestic courts ruled in accordance with the rules and procedures established under domestic law in finding that there was exculpatory evidence and that the defendants' conduct did not constitute a criminal offence that was provided for or punishable under the Criminal Code. The State party further adds that the Convention was not violated in this case because, during the defendants' trial for torture, the complainant was able to exercise his right to be represented by counsel and to challenge the judgment that acquitted the defendants. The State party reiterates that the Committee cannot substitute its own assessment of the facts for that of the domestic courts.

4.6 With regard to the complainant's allegations under article 14 of the Convention, the State party asserts that its domestic legislation guarantees victims of torture the right to redress and to fair and adequate compensation. However, the State party states that, in the present case, there has been no conviction and, consequently, no violation of article 14 of the Convention.

Complainant's comments on the State party's observations on admissibility and the merits

5.1 In his comments of 30 June 2021, the complainant argues that domestic remedies have been exhausted as a result of the judgment issued by the National Criminal Division and the decision in which the Supreme Court of Justice ruled on the motion for annulment. In this regard, the complainant asserts that treaty bodies only require complainants to exhaust available and effective remedies and that, where multiple remedies are available, complainants must exhaust only such remedies as would be adequate to remedy a breach.¹⁶ In addition, the complainant states that, under article 22 (5) (b) of the Convention, an exception to the rule that domestic remedies must be exhausted applies where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the alleged victim. The complainant argues that the appropriate avenue in this case was through the criminal justice system, and it has been exhausted. The complainant adds that the

¹⁵ National Criminal Division, judgment of 30 September 2013; and Supreme Court of Justice, Transitional Criminal Division, decision of 16 June 2015.

¹⁶ International Justice Resource Center, "Exhaustion of Domestic Remedies in the United Nations System" (2017). Available at <https://ijrcenter.org/wp-content/uploads/2018/04/8.-Exhaustion-of-Domestic-Remedies-UN-Treaty-Bodies.pdf>.

constitutional law remedy of *amparo* is not a suitable or adequate means of establishing criminal liability or providing redress, since constitutional law judges are not empowered to make determinations as to the facts of the case, criminal liability or appropriate compensation.¹⁷ The complainant also argues that *amparo* is a special remedy and that, in the present case, all ordinary remedies were exhausted in the context of criminal proceedings. The complainant also recalls the Committee's previous statement that, "having unsuccessfully exhausted one remedy, it should not be required, for the purposes of article 22 (5) (b) of the Convention, to exhaust alternative legal avenues that would have been directed essentially to the same end and would in any case not have offered better chances of success".¹⁸ The complainant argues that, in the case at hand, a petition for *amparo* would have been ineffective and had no chance of success, given that the Supreme Court of Justice found that the Supreme Prosecutor's decision not to file charges prevented it from proceeding with the case because of the principle of hierarchy. The complainant also states that, under the case law of the Constitutional Court, *amparo* proceedings against judicial decisions, specifically in criminal cases, may be brought only if a constitutional principle or a fundamental right has been clearly and directly violated, making the decision unconstitutional,¹⁹ and that claims regarding shortcomings in an investigation that have led to the acquittal of the suspects cannot be put forward through *amparo* proceedings; in the present case, therefore, the constitutional remedy of *amparo* is not only a special remedy that is unsuitable for the case; it is also ineffective. The complainant recalls that it is the State party that must show that there is a reasonable prospect that the remedy of *amparo*, as provided for under its laws, will result in an effective remedy in the circumstances of the case.²⁰ Lastly, the complainant asserts that the State party has not indicated in its observations why this remedy would be effective, beyond stating that recourse to it is legally possible, and reiterates that he has exhausted domestic remedies.

5.2 In relation to the State party's argument under article 22 (2), the complainant reiterates the Committee's holdings that an investigation in itself is not sufficient to demonstrate the State party's conformity with its obligations under article 12 of the Convention²¹ and that the issue is closely linked to the assessment of the merits of the case and the complainant's allegations regarding the facts and the shortcomings of the investigation, and therefore reiterates that his communication is not manifestly unfounded and does not constitute an abuse of the right of submission.

5.3 With regard to the State party's observations relating to article 2 (1) of the Convention, the complainant maintains that the criminal law provisions regarding the offence of torture are not yet in conformity with the international standard set under the Convention.²² He argues that, in any case, there was a violation of article 2 (1) of the Convention because the acts to which he was subjected constitute acts of torture under the definition set out in article 1 of the Convention, as they were committed by public officials and by third parties with the consent of the former, constitute a serious act and were committed for the purpose of extracting a confession from the victim. Regarding the seriousness of the act,²³ he recalls the statement of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that "the aggravated threshold of torture is always reached when,

¹⁷ The complainant cites Héctor Faúndez Ledesma, "El agotamiento de los recursos internos en el sistema interamericano de protección de los derechos humanos", *Revista IIDH*, vol. 46 (July–December 2007), p. 78.

¹⁸ *A. v. Bosnia and Herzegovina* (CAT/C/67/D/854/2017), para. 6.4.

¹⁹ The arguments put forward by the complainant indicate that the Constitutional Court has consistently found that constitutional law judges are not competent to hear cases involving decisions of this type. The complainant cites: Constitutional Court, interlocutory judgment, denial, case No. 00214-2014-PA/TC, para. 5; judgment, case No. 02383-2010-PA/TC, para. 8; judgment, case No. 01196-2011-PA/TC, para. 4.

²⁰ *Akmatov v. Kyrgyzstan* (CCPR/C/115/D/2052/2011), para. 7.3.

²¹ *Rakishev v. Kazakhstan* (CAT/C/61/D/661/2015), para. 8.7; and *Ushenin v. Kazakhstan* (CAT/C/60/D/651/2015), para. 7.5.

²² CAT/C/PER/CO/7, paras. 10 and 11.

²³ Inter-American Commission on Human Rights, report No. 92/05, case 12.418, 24 October 2005, para. 62; and European Court of Human Rights, *Selmouni v. France*, judgment of 28 July 1999, application No. 25803/94, para. 96.

additionally, severe pain or suffering is intentionally and purposefully inflicted on a powerless person”.²⁴ He reiterates that he, a minor at the time of the events, was tortured in that he was stripped, submerged in freezing water and beaten while in a state of complete powerlessness. The complainant states that the purpose of these acts was to make him confess to having committed a criminal act, which he finally did so that the torture would stop.

5.4 With regard to the violations of articles 12 and 13 of the Convention, the complainant claims that the grounds used by the domestic courts to acquit the defendants were based on the shortcomings in the early stages of the investigation and that, given the passage of time, those shortcomings cannot be corrected. The National Criminal Division and the Supreme Prosecutor’s Office considered that the defendants should be acquitted owing to a lack of evidence to establish their guilt, as there were deficiencies in the medical and psychological examinations and in the investigating judge’s inspection and, with the passage of time, the witnesses had changed their testimony.²⁵ The complainant adds that this was largely due to a procedural error that was pointed out at the beginning of the investigation but was not corrected until four years after the events had occurred. The complainant also claims that undue delays in the case were caused by other procedural defects attributable to the State party, such as the sentence that was set below the legal minimum and the fact that the case was handled under the summary procedure when it should have been handled under the ordinary procedure (see paras. 2.3, 2.6 and 2.7).

5.5 The complainant points out that the medical examination²⁶ was not carried out in line with the Istanbul Protocol²⁷ and that, even though various injuries were identified, the National Criminal Division considered that the charge had not been proved because injuries had not been found in places where they should have been found, such as the feet, waist and wrists.²⁸ As there were no professionals employed by the State party, the psychological examination was conducted by a psychologist who worked at a local hospital and therefore did not sign the forensic medical certificate, as a result of which the psychological evaluation, in which the complainant was diagnosed with “post-traumatic stress disorder”, was completely discarded.²⁹ The investigating judge’s inspection was not taken into account because of procedural defects that were attributable to the courts. The complainant claims that the lack of diligence in the investigation led to undue delays in the case and the invalidation of everything that had been done on two occasions, and that findings of violations of articles 12 and 13 of the Convention are thus warranted.

5.6 With regard to the violation of article 14 of the Convention, the complainant claims that, because of the failure to find the defendants guilty, he was denied access to adequate redress and compensation for the reported acts and that the mechanisms for redress for victims of torture are inadequate. The complainant reiterates the Committee’s statements in paragraph 3 of its general comment No. 3 (2012) and recalls that, in the State party, the only mechanism that exists³⁰ for obtaining redress is the judicial system.³¹

5.7 The complainant claims that, as a result of the criminal complaint, his father has been subjected to harassment aimed at driving the family out of the community and that this harassment has escalated since the acquittal.

²⁴ A/72/178, para. 33; European Court of Human Rights, *Selmouni v. France*, para. 101; and Inter-American Court of Human Rights, *Cantoral-Benavides v. Peru*, judgment of 18 August 2000, para. 99.

²⁵ National Criminal Division, judgment of 30 September 2013, p. 65. Annex No. 15 to the written submission setting out the complaint.

²⁶ Forensic medical certificate No. 001852-L of 14 September 2007. Annex No. 17 to the written submission setting out the complaint.

²⁷ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), annex IV.

²⁸ National Criminal Division, judgment of 30 September 2013, pp. 72 and 73. Annex No. 15 to the written submission setting out the complaint.

²⁹ *Ibid.*, pp. 74 and 75.

³⁰ Specialized mechanisms for redress are provided for only in connection with events that occurred during the internal armed conflict, under the Comprehensive Reparations Plan.

³¹ CAT/C/PER/CO/7, para. 34.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention.

6.2 The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.

6.4 The Committee takes note of the State party's argument that the communication should be declared inadmissible for failure to exhaust domestic remedies, since the complainant has not filed a petition for *amparo* against the judgment of the Transitional Criminal Division of the Supreme Court of Justice, under the Code of Constitutional Procedure.

6.5 The Committee also notes the complainant's argument that he was not required to file a petition for *amparo* in order to exhaust domestic remedies, since the remedy of *amparo* does not provide an additional opportunity for review of ordinary proceedings (see para. 5.1). The complainant has also pointed out that the Code of Constitutional Procedure provides that *amparo* proceedings against judicial decisions, specifically in criminal cases, may be brought only if a constitutional principle or a fundamental right has been clearly and directly violated, making the decision unconstitutional, and that claims regarding shortcomings in an investigation that have led to the acquittal of the suspects cannot be put forward through *amparo* proceedings.

6.6 The Committee recalls that, having exhausted one remedy, a complainant should not be required, for the purposes of article 22 (5) (b) of the Convention, to exhaust alternative legal avenues that would have been directed essentially to the same end and would in any case not have offered better chances of success, and that only those remedies that have a real possibility of succeeding must be exhausted.³² The Committee also recalls that the purpose of requiring that domestic remedies be exhausted is to give States parties the opportunity to perform their duty to protect and guarantee Convention rights. The Committee notes that in the present case, in the light of the complainant's allegations, the State party has not explained how the remedy in question would have been effective.³³ The Committee concludes that, in the present case, it has not been shown how the violations alleged by the complainant would have effectively been remedied through *amparo* proceedings. Accordingly, the requirements of article 22 (5) (b) of the Convention do not preclude the Committee from examining the communication on the merits.

6.7 As all admissibility requirements have been met and the complainant's claims under articles 2, 12, 13 and 14 of the Convention, relating to the failure to prevent the acts of torture to which he was subjected, the lack of an adequate investigation, the lack of due process guarantees and the lack of redress, have been sufficiently substantiated for the purposes of admissibility, the Committee declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

³² *Osmani v. Serbia* (CAT/C/42/D/261/2005), para. 7.1.

³³ See also the Habeas Corpus and *Amparo* Act (No. 23.506), art. 1. See further *Akmatov v. Kyrgyzstan*, para. 7.3.

7.2 Before considering the allegations made by the complainant, the Committee must determine whether the acts to which he was subjected constitute acts of torture within the meaning of article 1 of the Convention. In this regard, the Committee takes note of the complainant's allegations that he was forced by public officials to strip and walk barefoot over rocks, was submerged in freezing water with his hands tied for a prolonged period of time and was beaten and kicked, all so that he would confess to having committed a crime. The Committee also takes note of the State party's claims that the evidence produced at trial was insufficient to establish the defendants' guilt. However, the Committee observes that the State party has provided no information indicating that the alleged lack of inculpatory evidence could be interpreted as sufficient to conclude that the acts of torture described did not take place.³⁴ Consequently, the Committee considers that the facts presented constitute torture under article 1 of the Convention.

7.3 The Committee takes note of the complainant's allegations under article 2 of the Convention, relating to the State party's failure to prevent the acts of torture to which he was subjected, particularly as he was a minor at the time of the events. In this regard, the Committee observes that the complainant was arrested without a warrant and taken, without his father's being present, to the city of Cerro de Pasco and that he was deprived of his liberty, unable to communicate with his family and without food for approximately 18 hours, during which time he was subjected to acts of torture. Under these circumstances, the Committee considers that the State party has failed to meet its obligation under article 2 (1) of the Convention to take effective measures to prevent acts of torture.

7.4 The Committee takes note of the complainant's allegations under article 12 of the Convention, relating to a lack of due diligence in the investigation into the acts of torture, as the competent authorities failed to carry out a prompt and impartial investigation and there were serious irregularities in the investigation conducted.³⁵ The Committee notes, in particular, the complainant's assertions, which have not been refuted by the State party, that no investigation was opened by a competent authority until four years after the criminal complaint regarding the acts of torture had been filed, even though the complainant's father had filed a motion to have the Daniel Alcides Carrión Court of Mixed Jurisdiction declared to be without jurisdiction. The Committee also notes the complainant's assertions that, four years after the events had occurred, the First National Criminal Prosecutor's Office failed to remedy the flaws in the investigation conducted by the Daniel Alcides Carrión Provincial Prosecutor's Office of Mixed Jurisdiction, and that, when the proceedings took place again, some of the witnesses changed their statements. In the light of all the foregoing elements, the Committee considers that the State party has failed to show that the appropriate measures were taken to carry out a prompt and impartial investigation as required under article 12 of the Convention.

7.5 The Committee takes note of the complainant's assertions that the National Criminal Division considered forensic medical certificate No. 001852 to be the only objective evidence of the acts of torture. The certificate attested to the presence of multiple physical injuries in the form of swellings and abrasions, as well as "post-traumatic stress disorder" (see para. 2.4). However, the Committee takes note of the complainant's arguments that this certificate was not prepared in line with the Istanbul Protocol, in particular with regard to the interpretation of the findings, and that the Division consequently made its own interpretations regarding, for example, the alleged absence of marks on the complainant's waist and feet. In this regard, the Committee recalls the holdings of the Inter-American Court of Human Rights that "the failure to perform a medical examination ... or the performance of this examination without complying with the applicable standards, cannot be used to cast doubts on the truth of the presumed victim's allegations of ill-treatment"³⁶ and that "the lack of [a medical] evaluation or its delayed execution make it difficult or impossible to determine the seriousness of the facts, especially ... when there is no additional evidence".³⁷ The

³⁴ *Yrusta and Del Valle Yrusta v. Argentina* (CAT/C/65/D/778/2016), para. 7.2.

³⁵ *Evloev v. Kazakhstan* (CAT/C/51/D/441/2010), para. 9.5; *Bairamov v. Kazakhstan* (CAT/C/52/D/497/2012), para. 8.7; and *Gerasimov v. Kazakhstan* (CAT/C/48/D/433/2010), para. 12.5.

³⁶ *Case of J. v. Peru*, judgment of 27 November 2013, Series C No. 275, para. 333.

³⁷ *Case of Ríos et al. v. Venezuela*, judgment of 28 January 2009, Series C No. 194, para. 321.

Committee notes that, as there were no psychologists or psychiatrists at the Institute of Forensic Medicine in Cerro de Pasco, the psychological examination had to be performed by a psychologist working at Daniel Alcides Carrión Hospital, who had no expertise in cases of torture. The Committee can find nothing in the file before it to justify the failure of the courts to take other evidence apart from the forensic medical reports.³⁸ The Committee considers that such additional evidence would have been relevant, given that, although forensic medical reports are generally important for determining whether acts of torture have taken place, they are often insufficient and need to be compared with information from other sources.³⁹

7.6 The Committee recalls that the authorities must take the necessary steps to secure evidence, including through, *inter alia*, witness testimony, forensic evidence, medical certificates and all other measures necessary to provide an adequate record of the injuries and the corresponding findings, and that any deficiency in an investigation that undermines its ability to establish responsibility will place it at risk of falling foul of international human rights standards.⁴⁰ The Committee considers that the omissions referred to in the preceding paragraphs are incompatible with the State party's obligation to proceed to an impartial examination of the claim made by the complainant, within the meaning of article 13 of the Convention.⁴¹

7.7 With regard to the complainant's allegations concerning his right to redress, which is guaranteed under article 14 of the Convention, the Committee recalls that it pointed out in its general comment No. 3 (2012) that investigations into allegations of torture entail an obligation on the part of the State party to verify the facts and fully and publicly disclose the truth (para. 16). In addition, "to give effect to article 14, States parties shall enact legislation specifically providing a victim of torture and ill-treatment with an effective remedy and the right to obtain adequate and appropriate redress" (para. 20). The Committee also recalls that "a person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted" (para. 3). In this regard, the Committee observes that, according to the information provided to it, the complainant's right to redress has not been ensured by the State party.

8. The Committee, acting under article 22 (7) of the Convention, is of the view that the facts before it disclose a violation by the State party of articles 2 (1), 12, 13 and 14 of the Convention, read in conjunction with article 1.

9.1 The Committee strongly urges the State party to: (a) conduct a prompt, impartial and independent investigation into the allegations of torture made by the complainant; and (b) provide the complainant with full and appropriate redress, including adequate compensation, for the material and non-material harm suffered, and provide any psychological rehabilitation required.

9.2 In terms of guarantees of non-repetition, the Committee urges the State party to take the necessary steps to train: (a) the physicians and psychologists of the Institute of Forensic Medicine in identifying and documenting cases of torture, on the basis of the standards set out in the Istanbul Protocol; (b) members of the security forces and prosecutors in techniques for investigating allegations of torture, on the basis of international standards; and (c) members of the security forces and local government officials in techniques for holding minors in custody or pretrial detention, on the basis of international standards.

9.3 Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it

³⁸ *Gallastegi Sodupe v. Spain* (CAT/C/48/D/453/2011), para. 7.3.

³⁹ *Blanco Abad v. Spain* (CAT/C/20/D/59/1996), para. 8.8. See also Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 41.

⁴⁰ European Court of Human Rights, *Bati and Others v. Turkey*, judgment of 3 June 2004, applications Nos. 33097/96 and 57834/00, para. 134. See also Inter-American Court of Human Rights, *Case of Cabrera García and Montiel Flores v. Mexico*, judgment, 26 November 2010, Series C No. 220, para. 135; and *Case of Maldonado Vargas et al. v. Chile*, judgment of 2 September 2015, Series C No. 300, para. 76.

⁴¹ *Blanco Abad v. Spain*, para. 8.5.

has taken to respond to the above observations. The Committee also invites the State party to publish the present decision and disseminate it widely.
